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Attorneys for Defendants

KIM EMBRY & ENVIRONMENTAL HEALTH ADVOCATES, INC.

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

B&G FOODS NORTH AMERICA, INC.,

Plaintiff,

vs.

KIM EMBRY and ENVIRONMENTAL  
HEALTH ADVOCATES, INC., acting as  
enforcement representatives under California  
Proposition 65 on behalf of the State of  
California,

Defendant.

Case No.: 2:20-cv-00526-KJM-DB

**DECLARATION OF JAKE SCHULTE IN  
SUPPORT OF DEFENDANTS KIM  
EMBRY AND ENVIRONMENTAL  
HEALTH ADVOCATES, INC.'S MOTION  
FOR SUMMARY JUDGEMENT**

**Hearing Date:** August 23, 2024

**Hearing Time:** 10:00 a.m.

**Location:** 3 (15<sup>th</sup> floor)

**Judge:** Hon. Kimberly J. Mueller

**Magistrate:** Hon. Deborah Barnes

**Complaint Filed:** March 6, 2020

**Trial Date:** None Set

1 I, Jake Schulte, declare:

2 1. I am an attorney at law duly licensed to practice before all the courts of the State of  
3 California, including this Court. I make this declaration in support of Defendants Kim Embry  
4 (“Embry”) and Environmental Health Advocates, Inc.’s (“EHA”) Motion for Summary Judgment.  
5 I am familiar with the facts stated herein, and if called upon as a witness, I could testify to the  
6 following facts based on my own personal knowledge.

7 2. I am an associate of the law firm of Nicholas & Tomasevic, LLP (“N&T”). N&T  
8 has extensive experience handling complex class and representative actions, including Proposition  
9 65 citizen enforcement actions on behalf of Embry and EHA since 2017.

10 3. Embry and EHA investigate and file Proposition 65 enforcement actions on their  
11 own accord without any outside influence or encouragement from the Attorney General’s Office  
12 (“AGO”) or state officials.

13 4. Regarding the B&G NOVs/suits at issue, Embry and EHA, through their attorneys,  
14 chose, for example: (1) when and where to purchase the Cookie Cakes and Sandwich Cookies, (2)  
15 which independent, third-party laboratories to send the B&G cookies to for acrylamide testing, (3)  
16 which qualified expert to utilize to review the laboratory results and provide an opinion on  
17 exposures in excess of the NSRL, (4) when to issue the B&G NOVs, including the content therein,  
18 and (5) when and where to sue B&G after expiration of the mandatory 60-day notice period. The  
19 AGO or other state officials played no role in these decisions.

20 5. Attached hereto as **Exhibit A** is a true and correct copy of Defendants’ document  
21 production from this litigation, BATES numbered EMBRY\_EHA\_000001-1545.

22 6. Attached hereto as **Exhibit B** is a chart identifying the BATES location of each  
23 available invoice, product picture, lab test, and expert report for the B&G and 70 random NOV  
24 from Defendants’ document production.

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7. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the deposition transcript of JR Holliday, Defendant EHA's 30(b)(6) corporate representative, dated May 7, 2024.<sup>1</sup>

8. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the deposition transcript of Juvenil Marchisio, Plaintiff B&G's 30(b)(6) corporate representative, dated April 26, 2024.

9. Defendants retained the B&G products (Cookie Cakes and Sandwich Cookies) purchased in 2019/2020 and produced them to B&G in this litigation. In short, B&G has access to the same cookies from the same packages purchased by Defendants 4-5 years ago that were tested by IEH and Medallion. Attached hereto as **Exhibit E** is a true and correct copy of the parties' Stipulated Destructive Testing Protocol surrounding the production of the subject cookies finalized March 11, 2024. Attached hereto as **Exhibit F** is a true and correct copy of the Chain of Custody Record demonstrating the transfer of cookie samples from Defendants to B&G dated March 12, 2024.

10. B&G issued a subpoena to IEH in this litigation and IEH produced documents responsive to the subpoena.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 19, 2024, in San Diego, California.

By: /s/ Jake Schulte  
 Jake Schulte  
 Declarant/Attorney for Defendants

<sup>1</sup> For all deposition excerpts attached hereto, and in accordance with Local Rule 133(j), contemporaneous with this filing, Defendants will provide "an electronic copy of the [entire] deposition [transcript] in lieu of the courtesy paper copy to the email box of the Judge [] and concurrently email or otherwise transmit the deposition [transcript] to all other parties."